

Export Administration Annual Report Fiscal Year 2001



U.S. Department of Commerce Bureau of Export Administration



January 2002

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STATEMENT OF THE SECRETARY AND THE UNDER SECRETARY

It is our great privilege to present this report on the activities of the Bureau of Export Administration (BXA) in Fiscal Year 2001.

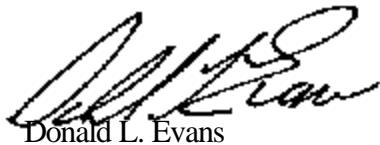
FY 2001 witnessed BXA fulfilling the wide range of responsibilities delegated to it as the Department of Commerce agency charged with addressing issues where industry and national security intersect. From leading the Federal Government's outreach to the private sector to protect "critical infrastructures," to working with international partners to strengthen export controls on sensitive nuclear, chemical, and biological items and technologies, BXA performed an array of functions that has grown substantially over the past decade as Congress and the Department have recognized the close interrelationship between economic and national security. Indeed, the name "Bureau of Export Administration" is an anachronism; although administering export controls on dual-use items remains a core BXA responsibility, it is only one of many important functions that the agency performs today.

The paramount importance of BXA's broad responsibilities was underscored by current events of FY 2001, including the terrorist attacks of September 11, 2001, the transmission of anthrax-laden letters by bio-terrorists, and recurrent cyber attacks on the Nation's information systems. These events also made clear that, in today's world, protecting our national security must encompass the protection of our economy and critical infrastructures – assets, technologies, and networks that are primarily developed, owned, and operated by the private sector. Government and industry must cooperate to accomplish this task effectively.

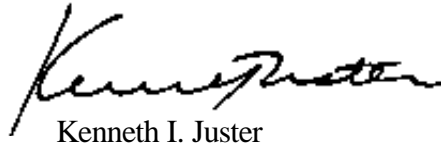
Cooperation between the public and private sectors was the hallmark of many BXA activities over the past year, including administering the Defense Priorities and Allocations System, assisting U.S. entities to prepare for and host facilities inspection visits by the Organization for the Prohibition of Chemical Weapons, initiating national outreach to build a business case for protecting privately owned information systems that support our critical infrastructures, and pursuing defense trade advocacy efforts.

BXA also renewed its commitment to public-private cooperation in its traditional mission of controlling dual-use exports in support of our national security, foreign policy, and other goals. During FY 2001, BXA worked closely with industry to develop export control laws and compliance systems that are more effective and less burdensome on exporters and improve and expedite the export licensing process. BXA also continued to vigorously enforce the export control laws, as evidenced by several significant cases concluded in 2001.

Unfortunately, we are not able to report, as we had hoped, that a new statute authorizing dual-use export controls has been enacted. The Export Administration Act of 1979 expired in August 2001, forcing the President, like his three predecessors, to invoke emergency powers to preserve the existing dual-use export control regime. The absence of a statutory framework that reflects current global political and economic realities seriously undermines our efforts to administer a modern export control system capable of countering modern threats such as terrorism and the proliferation of weapons of mass destruction. We again urge the Congress to enact legislation substantially in the form of S. 149, the *Export Administration Act of 2001*.



Donald L. Evans
Secretary of Commerce



Kenneth I. Juster
Under Secretary of Commerce
for Export Administration

EXECUTIVE SUMMARY

This report summarizes the activities of the Bureau of Export Administration (BXA) of the Department of Commerce (Department) during Fiscal Year 2001.¹

Overview of BXA

Created in 1987 principally to administer the dual-use export control regime that had then resided in the Department's International Trade Administration, BXA today has a broad and expanding array of responsibilities for issues arising at the intersection of industry and national security. In addition to administering and enforcing controls on the export of sensitive dual-use items (i.e., goods and technology), BXA's responsibilities extended to:

- coordinating the Commerce Department's post-September 11 efforts to ensure homeland security;
- leading U.S. Government outreach efforts to promote federal initiatives and public-private partnerships across industry sectors to protect the nation's critical infrastructures;
- monitoring the viability of the U.S. defense industrial base and ensuring that neither imports nor foreign acquisitions threaten U.S. national security;
- advocating sales of defense items to foreign countries on behalf of U.S. companies;
- implementing economic sanctions in furtherance of U.S. foreign policy objectives;
- facilitating the compliance of U.S. industry with international arms control agreements;
- cooperating with and assisting other countries on strategic trade and export control initiatives;
- enforcing antiboycott laws; and
- administering the Defense Priorities and Allocations System.

¹ In accordance with the Department's past practice, this report has been prepared and is being submitted to Congress pursuant to the annual reporting requirement set forth in Section 14 of the Export Administration Act of 1979 (EAA). It should be noted, however, that this annual reporting requirement has, together with the rest of the EAA, expired, and the President has continued the U.S. dual-use export control regime under the authority of the International Emergency Economic Powers Act. It should be further noted that some of the activities described in the report are based on statutes other than the EAA.

Indeed, even BXA's core export control functions have changed substantially as the rationales and mechanisms for imposing export controls have shifted.

The evolution of BXA's mission is the product of substantial geopolitical changes that have occurred over the past two decades, including the end of the Cold War, the rise of non-state actors, globalization, rapid technological change, and a rejection of centrally planned economies in favor of free markets.

These changes and the evolution of BXA's mission also have dictated a change in BXA's philosophical orientation. Historically, BXA's function has been the regulation of U.S. industry. While regulation to protect national security remains necessary, BXA is today bringing to both its new and old missions two new approaches – (i) working with industry to promote national security, and (ii) working with U.S. trading partners to protect global security while seeking to minimize governmental interference with trade.

The changes in BXA's mission and goals are demonstrated in the FY 2001 activities highlighted below and in the subsequent chapters that focus on BXA's principal offices.

Fiscal Year 2001 Highlights

Highlights of BXA's activities during FY 2001 include:

Homeland Security and Response to Events of September 11

BXA has played, and will continue to play, an important role in the broader Federal Government response to the terrorist attacks on September 11.

In the immediate aftermath of September 11, BXA applied its specialized capabilities to assist in the Federal Government's investigation and response. In the week after the attacks, BXA assigned several enforcement agents to assist the FBI with its investigation of the attacks. BXA agents specializing in computer recovery analysis worked closely with FBI joint terrorism task forces in New York, Dallas, and Boston to analyze seized computers for evidence of the terrorists' criminal conspiracy. While BXA had been emphasizing enforcement activities related to terrorist groups and those who, through illegal exports, might be supporting them prior to September 11, those efforts were redoubled after the terrorist attacks.

Critical Infrastructure Protection

BXA's Critical Infrastructure Assurance Office (the CIAO) continued to expand its Project Matrix program, an effort that took on new urgency in light of the September 11 attacks. Project

Matrix helps federal agencies to identify physical and information system assets that are essential for the government to protect U.S. national and economic security. Following September 11, the CIAO used information from Project Matrix to help the National Security Council identify and protect potential targets of future attacks.

The CIAO also continued to work with other government agencies and the private sector to develop the national strategy for critical infrastructure protection and to raise awareness in the private sector of the need to protect information systems.

In November 2001, the Under Secretary of Commerce for Export Administration was appointed to represent the Commerce Department on the President's Critical Infrastructure Protection Board. The Under Secretary also will chair the Board's Standing Committee on Private Sector and State and Local Government Outreach, which is the Committee responsible for coordinating critical infrastructure protection issues with the private sector and state and local governments.

Industry Outreach and Cooperation

BXA worked closely with industry in FY 2001 to enhance national and global security:

- BXA conducted 47 export compliance seminars that provided information and training to more than 6,000 participants. In addition, BXA's 14th annual Update Conference on Export Controls and Policy attracted more than 600 representatives from the global exporting community;
- BXA hosted 16 on-site inspections of U.S. chemical facilities, carried out 17 site assistance visits to prepare facilities for inspections, and conducted outreach seminars to assist industry in compliance with the Chemical Weapons Convention; and
- BXA conducted a vigorous Export Enforcement-led outreach program geared toward increasing private sector awareness of and compliance with the export control laws, with a particular emphasis after September 11 on strategic industries, such as chemical manufacturers and biotechnology companies, that produce goods and products that terrorist groups might seek to obtain.

Export Licensing and Policy

In FY 2001, BXA approved export license applications for products with a total value of \$10.9 billion, an increase of \$2.9 billion from FY 2000. The speed with which BXA processed most export licenses continued to improve in FY 2001, notwithstanding a slight increase in the total number of applications submitted (10,884 in FY 2001 vs. 10,701 in FY 2000). The processing time for license applications that did not require interagency review averaged 12

days, a decrease from a 15-day average in FY 2000. The processing time for licenses requiring interagency review in FY 2001 averaged 44 days.

BXA's overall approval rate for license applications in FY 2001 increased. BXA approved 8,806 applications, returned 1,740 applications without action, and denied 225 applications, a decrease from 398 denials in FY 2000. This decrease in denials resulted largely from the removal of many Indian and Pakistani entities from the Entities List during FY 2001.

BXA implemented a number of significant export control policies in FY 2001, including:

- BXA twice revised control thresholds for high performance computers (HPCs). The revisions raised the control level on HPCs to 85,000 millions of theoretical operations per second (MTOPS) for Computer Tier 3 countries, thereby relaxing most controls on standard computers available on a commercial, mass market basis. In addition, several countries previously included in Computer Tier 2 were moved to Computer Tier 1, thereby further streamlining controls on computers destined for those countries.
- On July 12, 2001, BXA amended the Export Administration Regulations implementing certain provisions of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) relating to exports of agricultural commodities to Cuba. These regulations provide a streamlined procedure for authorizing exports of agricultural commodities to Cuba. Under this procedure, an exporter submits prior notification of a proposed transaction to BXA and, if no reviewing agency objects to the transaction within 12 business days, the exporter may ship under a new license exception.
- In response to the removal of Slobodan Milosevic as President of the Federal Republic of Yugoslavia and the subsequent democratic elections, on March 1, 2001, BXA published a rule lifting many of the trade sanction controls on Serbia. The rule also included a prohibition on exports and reexports by U.S. persons to individuals named in Executive Orders 13088 and 13192, including Milosevic, his family, and their associates, as well as persons indicted by the International Criminal Tribunal for the Former Yugoslavia.
- An interagency group, chaired by the National Security Council, resolved a long-standing export licensing jurisdictional dispute with respect to certain "space qualified" items. The resolution moved five categories of items to the U.S. Munitions List (USML), retained six categories of items on the Commerce Control List (CCL), and subdivided

five additional categories between the USML and CCL. Exporters of these items now have a greater measure of certainty regarding which agency has licensing jurisdiction over space qualified items.

Export Enforcement

BXA continued to enforce its export controls aggressively. BXA investigations of export control violations resulted in the imposition of \$2,392,000 in civil penalties and \$1,125,400 in criminal fines during FY 2001.

BXA concluded a number of significant enforcement cases in FY 2001, including a landmark enforcement action against TAL Industries (TAL), a wholly owned subsidiary of the China National Aero-Technology Import and Export Corporation (CATIC), a People's Republic of China (PRC) government-owned corporation, for the export of machine tools from the United States to the PRC. TAL's criminal plea marked the first time in U.S. history that a corporation, wholly owned by the government of the PRC, waived its sovereign immunity and was convicted of a criminal offense in a U.S. court. BXA also imposed an administrative penalty and denial of export privileges on TAL.

In addition, BXA continued to enforce the antiboycott laws aggressively. BXA imposed \$117,250 in civil penalties for antiboycott violations during FY 2001. BXA also continued to process reports by U.S. businesses of requests to participate in the Arab League boycott of Israel. BXA received notifications from 319 persons who reported the receipt of 1,270 documents containing 1,482 boycott requests.

Defense Industrial Base Programs

BXA conducted several major activities in FY 2001 related to preserving the strength of the U.S. defense industrial base, including:

- completing a nine-month investigation into whether imports of iron ore and semi-finished steel threaten to impair U.S. national security;
- advocating the sale of approximately \$700 million of conventional arms and weapons systems to foreign governments through its defense trade advocacy programs;
- partnering with the U.S. Coast Guard to promote the Deepwater acquisition program to international coast guards and navies; and
- working closely with Congress to obtain a two-year reauthorization of the Defense Production Act.

International Cooperation

BXA engaged in a variety of international activities in FY 2001, on both a bilateral and multilateral basis, to strengthen national export controls and the multilateral export control regimes.

BXA played an important role in bilateral and multilateral initiatives designed to strengthen the national export control systems of key countries. BXA continued to work actively to assist the states of the former Soviet Union, the Baltic region, and Central and Eastern Europe to establish and increase the effectiveness of their national export control systems. During FY 2001, BXA conducted 44 bilateral technical assistance exchanges and hosted several multilateral conferences and workshops, including the Fifth Regional Forum on Export Controls and Nonproliferation for the Nations of Central Asia and the Southern Caucasus.

BXA also worked closely with the Departments of State and Defense to develop proposals to strengthen the effectiveness of the four multilateral export control regimes: the Wassenaar Arrangement, the Nuclear Suppliers Group, the Australia Group, and the Missile Technology Control Regime. Significant accomplishments in FY 2001 include agreement at the Wassenaar Arrangement to liberalize controls on mass market high performance computers and general purpose microprocessors and to streamline controls on mass market encryption products.

In addition, BXA strengthened its international enforcement in FY 2001 by posting an export control attaché to the U.S. Embassy in Moscow. This official assists the Russian Federation in implementing enforcement procedures to halt the proliferation of U.S. and Russian strategic goods to countries of concern. An attaché is also posted in Beijing, China.

BXA also worked with a number of key “transshipment” countries to develop a set of “best enforcement practices” to address the problem of controlling goods that are transshipped. These practices were adopted at a November 2000 International Transshipment Enforcement Conference – the first time transshipment countries as a group have agreed to a uniform set of best practices.

Information Technology Initiatives

BXA continued to improve its Simplified Network Application Process (SNAP), a Web-based system that allows exporters to submit license applications and other related actions directly to BXA through a secure Internet connection. BXA is finalizing new capabilities for SNAP, including electronic submission of supporting documentation, tracking of interagency

information requests, and elimination of additional paper-based forms. Currently, 60 percent of the license applications received by BXA are transmitted through SNAP.

BXA also continued to make progress on the redesign of its Export Control Automated Support System, the automated system that tracks the processing of export license applications. Accomplishments included the development of software requirement documents, the selection of an integration contractor to build the system, selection of case management software, and the approval of a multi-year software development plan.

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